this claim could be supported. The decision was placed on the grounds not only that the supervisors intended to convey only a leasehold estate, with no more than the usual rights of such an estate, but also that the supervisors did not, under the code, in any event, have the power to grant anything more than a leasehold estate.

THE CONSIDERATION IN ANTE-NUPTIAL CONTRACTS.—At common law, all existing obligations between husband and wife were extinguished by the marriage, *Long* v. *Kinney* (1874) 49 Ind. 235; *Butler* v. *Butler* (1885) L. R. 14 Q. B. D. 831, and hence marriage settlements between them were unenforceable. For this reason equity took jurisdiction, *Johnston* v. *Spicer* (1887) 107 N. Y. 185, and the fact of marriage in reliance on the agreement was sufficient consideration for its complete enforcement, *Hobson* v. *Trevor* (1723) 2 P. Wms. 191; *Matter of Young* (1882) 27 Hun 54, aff'd. 92 N. Y. 235, by either of the contracting parties or their children, *Newstead* v. *Searles* (1837) 1 Ark. 265; *Michael* v. *Morey* (1866) 26 Md. 239; and see 39 Sol. J. 789, 802; but seemingly no inquiry was made as to whether or not there had been a previous engagement. *Matter of Young, supra; Crostwaight* v. *Hutchinson* (Ky. 1811) 2 Bibb 407. Where the settlement was by deed purporting to vest an estate either in law or equity, *Newstead* v. *Searles, supra*, this was perfectly good in principle, as it was plain that no resulting trust could have been intended; 3 Pomeroy, Eq. Jur. § 981; 6 COLUMBIA LAW REVIEW 329, 330; and the future born children were sufficiently interested as not to be classed as volunteers. Even under the Stat. 27 Eliz. c. 4, concerning voluntary conveyances, such a result could be supported on the ground of statutory construction. *Maguire* v. *Thompson* (1833) 7 Pet. 348; 39 Sol. J., *supra*. But where the settlement contained executory covenants, a further inquiry should have been made, as equity required the same consideration to enforce a promise under seal, as law required to enforce a simple promise. *Jefferys* v. *Jefferys* (1841) Craig & P. 138; *Burling* v. *King* (N. Y. 1873) 66 Barb. 633; *Estate of Webb* (1875) 49 Cal. 541.

In a recent case this distinction was disregarded by a closely divided court. In contemplation of plaintiff's marriage, his father, in a covenant to which plaintiff, his intended bride, a Russian noblewoman, and her parents were parties, covenanted to leave at his death to the bride and plaintiff each, one-fourth of his estate. He made a will in execution of the covenant, but later by a codicil left the plaintiff's share to defendant in trust for plaintiff. Defendant being in possession under decree of the surrogate, plaintiff brings this action for specific performance. The court, relying on chancery precedent, and on some English cases at law, bad in principle, but strongly protesting that there was consideration, decreed specific performance. *Phalen* v. *United States Trust Co.* (1906) 186 N. Y. 178.

Although this case does not present the common law difficulty of extinguishment of obligations between husband and wife, yet if the agreement is based on good consideration it provides a case for equitable interference. *Parsell* v. *Stryker* (1869) 41 N. Y. 555. Where a party has already contracted to perform a certain act, neither the performance of that act, *Stilk* v. *Myrick* (1809) 2 Camp. 317, nor a promise to perform it, *Bartlett* v. *Wyman* (N. Y. 1817) 14 Johns. 260, can

again serve as consideration. This is true whether the second contract is between the original contracting parties or with a third party. *Vanderbilt* v. *Schreyer* (1883) 91 N. Y. 392; *Seybolt* v. *Railroad Co.* (1884) 95 N. Y. 562. Hence, where parties are engaged to be married, a promise made by one of the contracting parties, or by a third party, in consideration of marriage, is void for want of consideration. But under certain circumstances this would not occur. If the parties at the time of the mutual promises of marriage, also promised expressly or impliedly to make a marriage settlement, the latter would be supported by the original agreement, *Peck* v. *Vandemark* (1885) 99 N. Y. 29; or if the original promises were conditioned, expressly or impliedly, on a marriage settlement being entered into, the latter would be supported by valuable consideration; or if, the original promises being absolute, all the parties voluntarily enter into a new arrangement containing the marriage settlement, the original promises may be considered as rescinded and there is a sufficient consideration. *Lattimore* v. *Harsen* (N. Y. 1817) 14 Johns. 330. The consideration, of course, could operate in favor of those only who gave it, *Tweddle* v. *Atkinson* (1861) 1 B. & S. 393; but in those jurisdictions following *Dutton* v. *Poole* (1679) 1 Vent. 332, *Todd* v. *Weber* (1884) 95 N. Y. 181, the children of the marriage might be allowed to sue; and where the broad beneficiary ground is taken, *Hendrick* v. *Lindsey* (1876) 93 U. S. 143, any beneficiary might sue.

The facts in the principal case would probably have fallen within either the last or the second of the schemes suggested above and the case could thus have been decided for the plaintiff on strict principle. On the other hand, the court might have avowedly disregarded principle, and relying on the results of decided cases, have laid down the rule that contracts in contemplation of marriage should be enforced without consideration. 2 Kent, Com. (11th ed.) 158. But to claim that there was consideration, citing *Shadwell* v. *Shadwell* (1860) 9 C. B. N. S. 159, and *Coverdale* v. *Eastwood* (1873) L. R. 15 Eq. 121, without going into some such analysis as the foregoing, could not but lead to confusion.

EQUITABLE SUPERVISION OF CONTRACTS FOR PERSONAL SERVICES.—It is a well-known rule that a court of equity will not decree specific performance of a contract, even though the remedy at law is clearly inadequate, unless the contract be "such that the court is able to make an efficient decree for its specific performance, and is able to enforce its own decree when made." Pomeroy, Eq. Jur. (3rd ed.) § 1405. Conspicuous among the classes of contract which come within the operation of this rule are those involving continuous performance, or personal skill. Prolonged supervision and nice criticism and direction have been considered beyond the power of the courts to bestow. *Ewing* v. *Litchfield* (1895) 91 Va. 575; *Blanchard* v. *Detroit Co.* (1875) 31 Mich. 43. The discretion of equity, however, is not to be deemed hidebound, and with increasing needs it has been in certain cases somewhat extended. In building contracts where the work is to be done on land which the defendant has acquired from the plaintiff pursuant to the contract, clear inadequacy of legal remedy has led the courts to give specific performance, provided the work, though complex, is accurately defined. *Storer* v. *Railway Co.* (1842) 2 Y. & C. Ch. 48;